R. S. 58]

Previous references.

(45)

1902-03.

(police)

police File No. 45 of 02-0.

Serial Nos. 1—6

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1— 6

Major **Part B for** June 04.

SUBJECT.

Prosecution of Thammaiah.

From the D. B. of Police.

No: C. 19. 23.3.

Submits ~~the~~ records of enquiry held
by District Magistrate of Tumkur on ~~the~~ Complaint
of ~~the~~ Thammayya of Gubbi about ~~the~~ ~~the~~ police Subdt. in ~~the~~ investigation of the gun
case and solicits ~~the~~ sanction of Govt
to ~~the~~ Thammayya criminally at Sort Court

GPB—8,500—21-7-14

To do —
No: 4 (650. 20.
Informs that there is no objection G
~~the~~ institution of Judicial

reports that Mr.
conduct the prosecution of the case against Thanmaiah.

4. To — do — ℓ 2531-2. 25.5.04
Comptroller.

Approves his action and requests to inform
result of the case for information

5. From the I.G. of Police.
NO: 7445-465. 16.6.04

Explains why the services of the Govt P.P.
were not availed of to conduct the prosecution of Thanmaiah.

6. To — do —
NO: 2766.

Records the above.

Sd/- S. Krishnaiah.

Endorsed
Communicated
Sd/-

OFFICE OF THE DEWAN OF MYSORE,

(REVENUE AND GENERAL DEPARTMENTS).

(Full Office Note.)

‡ **Subject.**

Thammayya's petition to the Inspector General of Police in Mysore in connexion with the Gubbi Qua-druple murder case. & the Igp's Report thereon No. 18 camp dt 23-3-03, requesting sanction to the prosecution of Thammayya.

SECTION Police

415/02

FILE No. 34/03-04.

SERIAL No.

* **Note.**

1. The following is the translation of the petition presented in person by Thammayya to the Inspector General of Police on 19-2-03 " Having come to understand on 11-9-02 the murders of my brother Huchappa and my sister-in-law, Honnamma, and two others committed on 10-9-02 at Gubbi, I reported the names of the suspected persons on the same day. On the 13th, the Police Superintendent came to Gubbi. He went to the burial ground and saw the corpses of Honnappa and Doddayya. I told him the names of the persons whom I suspected of the crime. I went with him to the travellers' Bungalow and he told me that he would inspect the house where the murders were committed after meals. He came there at 4 O'clock and inquired for me. He was told that my sister, Nurigamma saw on the 10th night, the third accused Kempanna and Shanbogue Ramayya both talking to Huchappa and that Kempanna supped and slept there, and that Shanbogue Ramayya went away when the Devalapur

Huchamma

* 1. Statement of case in narrative form in regular sequence of subject matter or date.
2. Opinions to be stated only as supported by precedents, or general rules which should always be quoted.
3. Serial numbers in file, &c., to be always stated.
4. Dates of important documents referred should be given.
5. Write on both sides, leaving the same side as margin.

‡ 1. No. and date of latest letter or paper.
2. Catch words to show nature of subject.
3. Subject to be in red and body of note in black ink.

Huchappa Devaru had come out to answer calls of na ture at about 3 in the night the Shanbogue and the first accused were near Huchappa's house. But these were not examined as witnesses; the Superintendent said that these were not wanted as witnesses. On the 14th of that month Shanbogue Ramaiya, Luckcore -gowda and his four sons were summoned to Gubbi, and Ramaiya was questioned (examined). Though he did not speak the truth, the Superintendent promised him that he would be let off free and taken as a witness in case he spoke the truth. After his state -ments were made, the Police Superintendent said that all this would not do but that if he should speak the truth regarding the jewels he would belie him and save him. Then Ramayya said that he would do so. I was asked to leave the place. I asked Shanbogu Ramayya, duffedar Sreenivasa Rao, Gundappa and the constable Ramanna who were walking out in the Petta at 9 O'clock in the night as to the place of their destination. Ramayya said that they were searching for the lost jewels on the 15th at about 7 O'clock. I went to the Superintendent and asked him about th jewels. He said that the matter was still uncertain On the same day the house of Luckcoregowda was exa mined and the accused Sidda, Narasa, Naraya, Puttoji Bomli Nanja were arrested. On the 24th morning the Police Superintendent took from me by compulsion on good bundi, one pair vole, one jedabille, one Kem- pina jimki. I can produce the fellow of the jimki. I suspect a great deal about these jewels and until the doubt is cleared I beg of you to suspend the order passed on the accused Sidda. The Police Super -intendent has let off the chief persons who have perpetrated the crime and I beg that proper arrange -ments may be made to arrest those persons." Flag

The

2. The following is Thammaiyya's statement before the Inspectc General of Police . " According to the Statement made in my petition I have produced the jimki. I informed the Police Superintendent to the effect that my sister Murigamma saw at 90'clock the Shanbogue, Ramayya, and Kempanna on the night when the murders took place in Huchappa's house. I also informed the Police Superintendent that when the Devalapur Huchappa devaru had come out to answer calls of nature at about three in the night, he saw th Shanbogue, Ramayya and Luchoregowda. The Superintendent examined these two persons but they were not taken as witnesses. I have nc told this either to the Police or to the Committing Magistrate or in the statement given by me in the Sessions Court or in my petition (i.e, the statement to the Committing and District Magistrates). On the 14th of September 1902 the Police Superintendent Ramayya and myself were in the travellers' Bungalow, Gubbi. The Superintendent asked Ramayya about the real facts of the jewels, Ramayya said that he would speak afterwards. The Superintendent sent me away. On the same night I saw Shanbogue Ramayya duffeda Srinivasa Rao constables Ramanna and Gundappa walking in the Pe-tah, where I asked Ramayya where they were all going he said that they were going in search of (the lost) property. I have stated that this was what I saw on the 15th morning at 7, I aske the Superintendent about the jewels. He said that inquiry was still going on. On the 24th morning the Superintendent compulsorily took from me one gold "bundi", one pair of "vale", one "jadabil one "jimki", that prosented now being the fellow. The jewels were not taken from me as bribe but only for comparison with and detection of the lost jewels. I did not see the jewels again anywhere after I gave them. To say that the jewels presented to me before the Court of the Committing Magistrate and the Sessions Court were the same as given by me, was not possible as they had been tampered with. Now I really believe that they are one and the same I have told that the jewels shewn to me in the Sessions Court were worn by the deceased Honnamma, but I have also told the jewels given to the four brothers were all of the same

pattern

pattern, I have given a detailed description of each jewel. As re
-gards 'Kempina jimki' and vale I did not say that all of us got
the same sort, but all the other jewels were of the same descrip-
tion." Flag B.

3. The petition and the statement made before the Inspector Ge
-neral of Police by Thammayya were so startling that he could not
put request the Deputy Commissioner and District Magistrate of Tum
-kur to make a local inquiry in-as-much as the allegations contain
-ed in them were of a very serious nature. Before the District
Magistrate the petitioner deposed as follows. " I was present when
Shanbogue Ramayya gave his statement to the Police Superintendent.
I was present also when he was examined, but was not present when
he was examined in the Court. So I do not know whether there is
any difference between his first and second statements. Shanbhgue
Ramayya was told by the Police Superintendent to be true in his
statement and that he would be taken as a witness and not be in-
cluded among the accused, I was present at that time and this took
place in the Travellers' Bungalow. The Police Superintendent,
Shnabogue Ramayya and myself were present and none else. I gave
to the Police Superintendent one 'bandi,' one pair of 'vale', one
jimki, one 'savantige'. He told that they were meant for comparing
with the (lost) jewels and that I need not be afraid of them. He
did not threaten me or say that he would keep me in the lockup
nor do any other harm. He has not done me any harm before. He wanted
the jewels and so I gave them, I have not received them back the
jewels that were before the Court seemed to be like those I gave,
but I cannot say that they were the very jewels. I saw the other
single jimki shewed to me. This is the thing that I shewed to the
Inspector General of Police, I did not take any receipt from the
Police Superintendent for the jewels, nor have I any witnesses.
My wife used to wear the jewels given to the Police Superintendent
But when I gave them, my wife had not worn them and they were
in the box. I took them out and gave them to him. My wife asked
me about the jewels in the month of Asvija and I told her that

I had given them to some one, but I did not tell her that I had given them to the Police Superintendent. I have not informed any body about the jewels given to the Police Superintendent and my not getting them back from him. I told my lawyer, Mr. Nagappa, and ~~asked~~ the Police Superintendent to return the jewels after its use in the Sessions Court. He said that they would be returned from Government. I asked him in his Bungalow. He gave me the same reply. There were none others present I was present when the hay-stack of Nagasandra Luckooregowda was searched and I have signed the Mahazar when the jewels were found out. The jewels that are now before the Court are those that were found there", Flag C

4. Murigamma and Huchappa devaru were also examined by the Dis-trict Magistrate of Tumkur.

Murigamma stated as follows:- Flag D

" The murdered Huchappa is my younger brother. I was in Gubbi on the night of his murder. My house is just opposite Huchappa's. On the night when the murder took place, at the supper time Huchappa called out 'Kempanna' and was speaking to him. Both Huchappa and Kempanna when they were supping in Huchappa's house were talking together. I cannot identify the person, Kempanna. There was another besides Huchappa and Kempanna. I do not know who he was. After supper was over Huchappa invited Kempanna to go to bed in the upstair room when they were doing so, the third person made his way to go out. Seeing this Kempanna asked if the Shanbogue was going away. He replied in the affirmative and stated that he would be coming the next day and then came out of the house. I departed for my house with milk . I do not know the nam of the third person. He was simply addressed as Shanbogue. This is all. Nor can I identify the person. I saw these three persons talking and reported the matter to my brother, Thammayya, on the night of the burial of Honnamma. I did not report the matter to any body else. The next morning after the burial, I noticed a person seated on a bench in a room in the house of Thammayya. There, my younger brother Tammayya and my elder brother Chickmal-layya and another person were standing. Then the man seated on

the

the bench inquired of me this news and I told him. Afterwards no one spoke to me of this affair.

5. Huchappa devaru deposed as follows:- (Flag E.)

" I am a resident of Gubbi residing in a house opposite to Huchappa's. On the night of the murder of Huchappa I was in my house, I slept about 10 O'clock and got up between 2½ and 3 to answer calls of nature . I opened the latch of the door and came out of the house and watered in the drain. There were none to my right or to my left. On the pial of Gubbi Settis', there were two persons standing, I did not know them, and even now do not know who they are or thier caste. No one has summoned me and taken my statemt. Two or three days after the deed, I told this only to Thammayya, this news but to no one else not to any Government Officers".

6. The petition and the statements of Thammayya as well as the depositions of Nurigamma and Huchappa devaru were read by the Police Superintendent, who states that he does not at all feel called upon to offer any explanation in reply to allegations of the wildest kind made in the above statements of Thammayya without the least regard f truth. The Superintendent states he was not given any information of the sort at any time before or after the trial either by Nurigamma o by Huchappa devaru and that Thammayya did not hand over any jewels to him. The Superintendent says the jewels produced in Court were discovered at the place pointed out by Sidda on the 26th September 1902. Both on the 25th and 26th September 1902, I was on duty with the Inspector General of Police at Tumkur. The jewels discovered and produced in Court were repeatedly and unmistakably identified by Thammayya and other relatives as those worn by deceased Honnamma and lost on the night of 10th September 1902. The 'jimki' now produced by Thammayya looks like the one identified by him in court as that of Honnamma It may or may not be of the identical pair. If it be of the same pair, Thammayya must have come by it by unlawful means. If it be not of the same pair then he must have made use of one of a similar pair for his present purpose". (Flag F)

7. The District Magistrate remarks on his inquiry thus (Flag G)

"The points urged by Thammayya are two—the first that evider
vas tendered to the Superintendent to show that Shanbogue Rama
vas concerned in the affair, but that no notice was taken of i
nd the Superintendent promised to Ramayya to make him a witne
In the case and not an accused, the two persons named by Thamma
viz, Murigamma and Huchappa devaru were examined by me. The for
states that she saw two persons Kempanna and a Shanbogue speak
o the deceased Huchappa but she cannot identify either the on
or the other nor does she even know the name of the Shanbogue.
She adds that the statement similar to the one made before me
vas made to a sahib who was seated in a chair in the house in
hich the murders were committed but this cannot at all be be-
ieved. Huchappa devaru states he saw two persons seated on th
ial of the deceased (Huchappa's house) but he does not know
ho they were. He denies having made any statement before the
uperintendent. The information given at this stage by these t
ersons is so vague that no action can be taken upon it.

The more serious allegation is, however, about the jewels p
duced as evidence in the case against Luckooregowda and other
harmayya states that the Superintendent of Police took from h
ne 'bundi', one pair of 'bendavales', single 'jimki' and a 'jedabille'
or the purpose of comparing them with articles that may be fo
n connexion with the case. He does not say so clearly but cau
iously insinuates that these articles have been passed off as
hose worn by the deceased, Honnamma. He states positively befo
e that he cannot even now say that the properties produced be
ore the Court are those given by him to the Superintendent an
hen he made that statement I shewed him the properties that h
een exhibited in the Sessions Court. He has no evidence to pr
hat he made over the jewels as stated by him to the Superinte
nt of Police, and that even his wife to whom the jewels were
ven for wear does not know that they were so given.

I am quite certain that the allegations made by Tharmayya
re false from beginning to end, and I am of opinion they were

ade to create in the minds of the Judges of the Chief Court before
hom the appeal in the case is pending, an impression unfavourable
o the prosecution. Of course no notice can be taken by that Court
f such irresponsible statements, and statements which besides do not
art of the records of the trial ".

. The Inspector General of Police in his letter dated 23rd March
903 states that the petitioner has taken a most daring and ill ad-
ised step and it is necessary, in the interests of public service, tha
n example should be made of such an unscrupulous individual . He
herefore requests the sanction of Government to prosecute Thammayya c
nally at Government cost for making such an unfounded and damaging.
tatement.

1st April 1904 Vanacungatan Runna

The Offence (technical name of the) which Thammayya is pro-
-posed to be prosecuted has not been specified.
But presumably it is that referred to in
S. 210 of the I.P.C, Viz. False charge of offence
made with intent to injure, or S. 203, false
information respecting an offence committed.
Neither of these requires the Sanction of Govt under
Sec. 195 of the Crim. Proc. Code; but probab
~~[illegible]~~ What is wanted by the D.G.P is sanction,
not for the prosecution, but for the cost of the
prosecution being met by Govt. ~~[illegible]~~
~~What is wanted for, is the prosecution~~
the offence being non-cognizable, & the
complainant being virtually the Police Supdt.
Who cannot therefore ~~[illegible]~~ in properly conduct-
the case. If approved, the cost may in the first
instance be defrayed by Govt, subject to the result
of the trial.

4.4.03

I cannot understand how a statement of Jamnagar before the Inspector-General, which does not cannot form a part of the record of Cases before the Chief Court, can lead the latter into a wrong Conclusion on the merits of the Case. The act can only amount to Defama- tion as far as I can see, but even that is doubtful. I do not Consider that this is a fit case for Govt to take upon itself to prosecute; at any rate, we should do nothing till the Appeals pending in the Chief Court are disposed of.

May a reply be given that the Prosecution should be un- [illegible] till the pending ap-

leals are disposed of; and that Govt has no objn to the prosn being undertaken by the Police Supdt, if he feels that his reputation has been injured thereby.

After all, the statements was made Concerning the investigation of a Police case to the head of the Police Deptt. I ~~think~~ venture to think that a prosecution based on such information would be inexpedient & prejudicial to the progress of Police work.

The Dewan

4 Apr 3

7564
4.4.03 01078

Moved reply that Govt have no objection to any action being taken in the matter under Sec 25 of Police against Ramaya who has admitted attempted to bribe of a false case and to throw dis on the action of the Police Dept

Draft now covered [illegible]

(I have not been able to find ~~the~~ admission by Dhanniah to effect stated in the draft report. The word "admitted" be omitted?

11-4-

Yes Hon

18/4/3

Init. 18/4/3

Draft issued ——— (Regd. No 1650/3

The Inspector General of P
now reports that on the strength
the above order, he has authori
Mr Saligram Subba Rao, Advoca
to conduct the prosecution of
case against Dhanniah.

Submitted for orders with a draft

Init 17/5/04 The order quoted does not however expressly authorize the incurring of expenditure in engaging Counsel to conduct the prosecution; but as the prosecution likely has been countenanced by Govt., the formal point perhaps follows by way of implication.

Jeq)

17-5-

Submitted to the Dewan with a draft 16/5/04

1774 8
16.V.04

Init 16/5/04

12

Submitted:-

The file relating to Probi Murder Case - wherein the telegram Subba Rao's appointment Counsel the Case, is required for reference. The same may be kindly ordered to be sent to Madras.

26.3.03. Asst Secy

The Secretary
Genl & Rev Depts.

Sent herewith

26/3/03

Subd to Asst Secy
26.3.03.

9332
26.3.03.

Subd to Secy
Hon. L. Mackenzie
said this
that
be
associate Hon. Subba Rao
with the
to
against

the Cuddapah Murder case
& there was also another
case raised by the
Magistrate, Vizag for
point for Cuddapah Ro
support the conviction
ree of the accused
he had appealed
against the Commitment
is file is a different
e. I therefore submit
if the other file may
looked into, so that
to see whether any
one or more witnesses
necessary. Sd
26.3.03

27/3/03

No order has been passed on this petition
27.3.03

Read
Sd
27/3/03

The D. Magistrate asked for
Mr S. Subbadevu's services
being secured both for the
conviction & the appeal from
the acquittal of certain accused
(2) for supporting the
conviction of the 6th accused who
has appealed. The order
passed ± (para 2) refers only
to the former. The D. Magistrate
be supplemented by another
covering the latter point also.
27/3

Why was the
order made? Put up draft please
Draft sd.

A draft is put up, but I do not know whether a regular order is necessary for better this purpose. The ~~best~~ course would perhaps be for the Dt Magte setting a special fee & writing for sanction.

2/4/3

The Dewan

2-4-03

9495
2.4.03

01044
Manager
Premier - Art
and Works
Merchants.

3.IV.03

(Dft. dated 01.04.03)

Gubbi murders.

A short history of the case.

On or about 10th September 1902, in the house of one Hutchappa a respectable sowcar of Gubbi - 4 cold blooded diabolical and unprecedented murders took place at Gubbi, of the following persons:- The said sowcar Hutchappa, his wife Honnammah, his cook Doddiah and a mendicant friend and relative Honnappah who happened to sleep that night in his friends (the late Hutchappas) house. The deceased Hutchappa was one of 4 brothers,, of them one Balappa is not alive and the other two are Chick Mallappa (9th Prosecution witness) and Thammiah (6th witness). The said brothers were divided in interest and have been living separately. Chick Mallappa was living in a portion of the house when the murders took place, but on the fatal night and from some time previously been living elsewhere, but his son Maraliah, a lad of 13 or 14 years was sleeping on the said night in one of the rooms down stairs, being in a corner, his presence was not noticed that night. The other brother Thammiah was living in a house on the opposite side of the road passing by Hutchappa's house. The medical evidence and the post mortem certificates (7th and 8th witnesses, Exhibits A B, A C, A D, & A E), clearly show that deaths in all the cases were due to the cutting of the neck by a sharp instrument and the profuse bleeding therefrom. It must also be ~~risen~~ noted, that on the night of the murders, all the male members, viz. Hutchappa, Doddiah and Honnappa were ~~all~~ sleeping upstairs and only Honnammah ~~were~~ was sleeping in a room downstairs; at all events the next morning the bodies were discovered in those respective places. The accused 1 to 6 and others were all charged by the Police, with having committed the murders and they were all with the exception of the 6th accused, discharged by the Committing Magistrate. On a revision petition being filed by the Police before the District Magistrate of Tumkur, he directed the committal before the Sessions of the accused 1 to 5 also. The Sessions Judge after an elaborate inquiry acquitted and discharged accused 1 to 5 & sentenced the 6th accused to the extreme penalty of law.

It may be noted, that the accused 2 to 4 are the sons of the 1st accused and they all belong to Nagasandra, a village 7 or 8 miles from Gubbi, 5th and 6th accused are said to be the ryots and debtors of the 1st accused. The above are the main facts of the case.

[Whether the Govt appeals]

The next question for consideration is whether the Government can appeal against the judgment of the learned Sessions Judge, acquitting and discharging accused Nos. 1 to 5. I beg to submit that an appeal should be made both ~~in~~ on administrative and general grounds, as well as on the merits of the case. It must be observed that the case is of a sensational and unique nature and the Press has been making a lot of comments for some time past, and further this case must have caused a lot of irritation between the Police and Magistracy of the District, and as especially the conduct of the Police is in question, ~~so~~ it is ~~last~~ best to get the final decision of the highnest tribunal in the Province. Further the Government has to be represented in supporting the conviction of the 6th accused and the Honourable Judges of the Chief Court have to go through the whole record in confirming or other-wise, the sentence of death pronounced on the 6th accused.

Apart from the above, the Government has a very good case to appeal, on the merits as to both of law and fact. I shall next proceed to that in some detail, after calling attention to some of the general observations of the learned Sessions Judge.

General observations of the Judge:-

In para 47 of the judgment it is observed "after a careful consideration of all the circumstances of the case, I am satisfied the Police have proceeded in their investigation on right lines and that the Shanbogue Ramiah's statement furnished the right clue and I feel morally convinced of the guilt of all the remaining accused also, but unfortunately there is not forthcomi sufficient legal evidence to warrant their conviction. If one o the ~~accused~~ accused persons had been in proper time made an approver, the result might have been different". The theory for the prose-cution is that in the village of Nagasandra, there were two

bitter factions, one of which was led by the 1st accused and the other by ~~Thummiah~~ Thimme Gowda and the deceased belonged to the latter factic and being an influential man, was able to thwart successfully the efforts of the 1st accused and his sons, especially in the matter of the dispute between Karey Gowda (elder brother of 1st accused) and ~~the~~ his alleged adopted son, the 3rd accused, the son of the 1st accused. Further the prosecution alleged and called witnesses t show that 1st accused was in open enmity with Hutchappa and tha to gratify his revenge and spite, 1st accused was openly saying that he wanted to get rid of Hutchappa, and that he (1st accused) with revengeful motives and from ~~also~~ desire to loot, committed with the help of his sons and others, the murders in question. Let u see what the learned judge says as regards these allegations by the prosecution. He reviews in paras 23-33 of his judgment the transactions between the 1st accused and his son, 3rd accused, on the one hand and the late Hutchappa on the other, leading to ope revenge and threat to get rid of Hutchappa; and ~~In~~ the acts of interference and annoyance which the deceased Hutchappa is said to have inflicted on the 1st accused and his sons dating back from Dece -ber 1901. The learned Judge finds that the 1st and 3rd accused finding Hutchappa's conduct unbearable openly ~~revived~~ avowed vengeance against Hutchappa and declared not only to his bosom friend Sha -bogue Ramiah but to others also, that Hutchappa should be got rid of and the 1st accused and his sons, especially, 3rd accused, had very substantial grievances against the deceased Hutchappa and very good and very strong grounds for looting him, and that to get rid of him was even openly broached and discussed, and he finally finds in para (32) "the motives for the murders have th been satisfactorily made out ".

There is another important finding of the Sessions Judge, which may ~~merey will~~ be noticed in this connection. The 1st accused pleaded that he and his son, the 2nd accused, were on the night of the murder at village Harnahalli, and that he reached Tumkur on the afternoon (at 3 P.M.) of the 11th September. The learned Judge after carefully revieving the prosecution evidence on this point, finds that the 1st accused travelled with Ramiah from

Caligai

ight, and that the 1st accused left the party with whom he was travelling to look for Bhudracharry, and that he returned after an absence of 2 or 3 hours and then proceeded to Tumkur reaching it at 7 A.M. of the 11th September 1902. He further finds that 1st accused's absence from his friends, on the night of the murders and his presence about the neighbourhood of the house, where the murders have taken place, is no doubt a circumstance ~~erecting~~ creating the strongest suspicion against him and I do not think, that is ~~different~~ sufficient to bring home the charge against him------. How does the learned Judge ~~in one~~ get over this? He says, that there is "one link" wanting to convict him with the commission of the murders which he had previously designed. This is very significant. There is no iota of evidence, that the 1st accused indulged in the ~~past-time~~ pastime of a ~~and~~ midnight vidit to his friend Bhadracharry who lives near the scene of offence, and not even ~~found~~ hence found in the statemer of the 1st accused himself, as far as I could see. Where did the learned Judge get this idea? The 1st accused raised a plea of alibi and he never ~~proceed~~ proved it. How does the Judge believe this statement and where is it proved? (vide para 36).

If the theory of the connecting link set up by the learned Judge is to be accepted, then it would be dangerous to convict a man of murder who is found with a drawn sword in a room ~~with~~ all alone, with the corpus delicti because nobody saw the murderer actually cutting the throat of his victim. The question is one of a regard being had to the common course of natural events, h -man conduct and public and private business in their relation to the facts of the particular case and ~~not~~ one of connecting links Then the sum total of the general findings above referred to, is that the Judge is morally convinced of the murders by the accus but he is not legally so, that the strongest motive for the cri is established and also that the 1st accused was found lurking about, after midnight near the house, the scene of murders, and th the 1st accused entirely failed to prove the alibi set up by hi ~~not~~ and in what manner, he spent ~~there~~ 2 or 3 hours at aftermidnigh near the house, the scene of offence. It is extraordinary how

after all those findings, the learned Judge thinks he is morally and not legally convinced of the guilt of the accused. We have yet to know where the sphere of moral conviction ends and where that of legal conviction commences, and how it is possible, when both convictions are arrived at by the evidence and proceedings before the court, to guage the quantam of the evidence, necessary to convert one kind of conviction into another. Especially in a case of murders of this kind well arranged, preconcerted, and in which for the obliteration ~~Ligation~~ of all evidence, is aimed by murdering even innocent persons owing no revenge from the murderer, like the cook and the mendicant; it is impossible to get any direct evidence, unless it ~~lie~~ by hired witnesses and the Judge has to go only on the general probabilities and general human conduct of the persons concerned. There is not the remotest suggestion by anybody, that the murdered persons had any other persons who would have sought the murder of those ~~possible~~ people out of revenge or with a view to loot. The desire was not for loot, is clearly established by the fact that no property was taken except the jewels worn by the deceased Honnamma.

I shall now deal with the Special grounds alleged by the learned Judge for acquitting 1 to 5 accused. The learned Judge ranges the prosecution evidence under 4 main heads, of the then 1 and 2 are:- I. The confessions ~~expressions~~ alleged to have been made by the 1st accused to Shanbogue Ramiah (16th Prosecution witness), and his presence at Gubbi on the night of the murder, also the confessions made by 2 and 3 accused to Bhadracharry (26th Prosecution witness). It must be noted that in both the said cases the confessions are extra-judicial, and be received with caution. As regards the confession by the 1st accused to Shanbogue Ramiah, the judge after carefully reviewing the intimate transactions between him and the 1st accused, finds that Ramiah has been shown to have been the closest friend and most confidential adviser of the 1st accused and his sons and if to any-body, he would unbosom himself it was certainly to Ramiah (para 34 of judgment), and the judge further observes that if Ramiah's statement is to be believed all the accused will be guilty of the murders in question. Then the

learned

Why Ramiah's evidence is rejected?

learned Judge rejects the evidence of Ramiah on the following grounds ; that Ramiah was one of those concerned in the conspira-cy and a member of it, without taking an active, direct part and that the alleged confession was made to him as one of the confe-derates or he must have known the whole affair and makes it ap-pear as confessed to him by 1st accused and so he must be regard-ed as an accomplice and not as an independent witness (vide pa-ra (36) of judgment) In arriving at the conclusion that Ramiah was a confederate of the accused, the judge seems to rely on the evidence of 15th witness, Eara, and 20th witness, who for the first time make the statements before the Sessions Court and not befor the Committing Magistrate; and further, the Police never suspected Ramiah of the murder but only Thammiah, and Ramiah was not arrest-ed for the murder but the whole village people were arrested among whom Ramiah was one. These inaccuracies are to be found in para (35) of the judgment. The Judgment proceeds to assume that Ramiah is an accomplice and that Ramiah's evidence cannot be believed and acted on unless it is corroborated in material particulars. The Judge further says "that Ramiah's statement is corroborated as far as the presence of the 1st accused at Gubbi on the night of the murder and his being absent from his fellow travellers for 2 or 3 hours after there arrival at Gubbi before midnight and no further, and he rejects his most important eviden I have already, under the head of general remarks noted, about the only connecting link, the judge wants, and does not find in the evidence. The nature and credibility to be attached to Ramiah's and Bhadracharry's evidence with reference to the confessions made to them by 1st accused and accused 2 and 3, raises some im-portant questions of law, viz, (1) Are they accomplices as found by the Judge? (2) What value is to be attached to their evidence according to Law? These questions do not seem to have been raise and decided in the Sessions Court. The term accomplice as define by Wharton is, "a person concerned with another or others in the commission of a crime." The co-operation in the crime must be rea and not merely apparent. It has been held by several English and Indian decisions that it is not every ~~visit~~ participation in a crime which will make a party an accomplice in it, so as to requi

his

his testimony to be confirmed, much depends on the nature of the offence and to the extent of the complicity of the witness in it. The evidence of an informer, however much disfavour may attach to his evidence, is not regarded as that of an accomplice (I.L.R. 193 and 363 and Taylor on evidence, Section 971). In this connection the following passage from Taylor may very pertinently be quoted. "One class of persons apparently accomplices, may here be named, to whom the rule requiring corroborative evidence does not apply, namely, persons who have entered into communication with conspirators, but who in consequence of either a subsequent repentance or an original determination to frustrate the enterprise, have disclosed the conspiracy, to the public authorities under whose direction they continue to act with their guilty confederates till the matter can be so far matured as to insure their conviction" (Taylor para 891) Under these circumstances, can Ramiah be re-garded as an accomplice? He is found to be the friend and adviser of the 1st accused and his son, he has helped them in severa Civil and Criminal transactions and he has often heard 1st accused say that Hutchappa should be got rid of. There is nothing to show that he followed the 1st accused on 10th September night for the purpose of the murder and that he knew that 1st accused separated from him ~~1st accused~~ for 2 or 3 hours, for the purpose of committing the crime. No doubt Ramiah's evidence should be taken with caution and not entirely scorned out of consideration as the Sessions Judge has done, for Ramiah who was all along the friend of 1st accused and his sons, when he found he was likely to be implicated as he was helping them till 31st August, in × × × other matters, began to be careful and speak the truth.

As regards Bhadracharry, the Judge himself remarks (para 37), the position occupied by him was also somewhat akin to that of Ramiah though not so strong. It is alleged, he too, was a friend and confidential adviser of 1st accused and his sons and used to write petitions and engage pleaders for them. The Judge says he was suspected in the case, (when and by whom?) and that he knew more than he chose to disclose. How can this make him an accomplice? In a recent Madras case an Inspector of Salt was accused of

receiving a bribe of Rs 50 from one Shammoogam. The latter alle-ed that he paid Rs 50 to the Inspector's peon and that when he paid the money, his gumasta and two others of his men, were present. The Sessions Judge regarded the gumasta and the other men present as accomplice witnesses and so directed the Jury, and the High Cou held that it was a misdirection and that the said witnesses were not accomplice witnesses. In the said case Benson J, observes af-ter considering the effect of S.133 and 114 of the Evidence Act. "There is nothing in law, as laid down in these sections to jus tify the broad proposition quoted by the Judge that the evidence of witnesses, who admit that they were cognizant of a crime, that they made no attempt to prevent it and that they did not disclose its commission should only" ~~only~~ be relied on to the same extent as that of accomplices. The degree of credit to be attached to the evidence of such witnesses depends on all the facts and circumstances of the particular case" (Madras Series January 1903 p. 111 particularly p 13). Applying this case on to Bhadracharry, he is anything else but an accomplice. The Sessior Judge simply treats them - Ramiah and Bhadracharry - as practic-ly accomplices and applies a mechanical rule as to their credi bility, instead of judging of their credibility by a careful co sideration of all the particular facts of the case affecting i Even granting, for arguments sake, that Ramiah was an accomplice the Judge assumes that ~~their~~ his evidence, must be corroborated. This is clearly opposed to law. If this case was a jury case, and no an assessors case such a direction will surely be a misdirecti the proceedings will be set aside. The form of the charge to t jury laid down and accepted by the Madras High Court in such cases is "The law is quite clear that though it is perfectly le for you to act on the uncorroborated evidence of accomplices, is the duty of the Judge to warn you that as a matter of commo experience it is unsafe as a general rule, to accept such evi-dence unless it is corroborated in material particulars" (Vide case quoted supra as also 14 Bombay 115 I.L.R. 9 All 528, 553). The Sessions Judge in this case, distinctly, in more than one place as ~~mes~~ that the evidence of an accomplice ought not at all to be believed unless corroborated. This expression of the law ~~vide~~

nd of para 37 and beginning of para 36 of judgment) to the assessors must have greatly prejudiced the opinion of the assessor nd it is clearly illegal and prejudicial to the prosecution. I urther submit that for the reasons I have already stated under eneral remarks, these 2 persons even if they be regarded as accomplices, even if their evidence is not corroborated (which is mply done here), their evidence is worthy of credit under the circumstances of this particular case.

The laerned Judge next deals with the question of the presence of the accused at Gubbi on the night of the murder, he does not believe that accused 2 or 5 were in other place as deposed to by 20 -29 and 30 Prosecution witness no valid reasons are given why all that evidence should be dispensed with. As regards the 1st accused though his presence that night at Gubbi is proved, the Judge says there is no evidence to connect him with the murder The Judge had already found that 1st accused ~~and his son 2nd accused~~ travelled together to Gubbi that night with Ramiah. So the 1st and 2nd accused stand in one boat. The ~~fence~~ defence never adduced ~~an~~ any rebutting evidence to show where the accused 2 to 5 were on the night of the murder.

The last point dealt with by the learned Judge is with reference to the 4 jewels discovered and produced by accused 2 ~~to~~ and 6. He finds that the said jewels were worn by the deceased Honnarmal on the night of the murder and they ~~are~~ were among the stolen prope ~~But~~ but disbelieves the evidence ~~corroborating~~ connecting 2nd accused with tl discovery and production of the jewels for no valid reasons a goes back to the confessions to Ramiah and Bhadracharry and he discharges accused No.2. In relation to the other points in t case, the discovery and production of the jewels is a very mi matter and even if all the evidence as to this is taken out o the record, there is ample evidence of the ~~complicating~~ complicity of th accused 1 to 5 in the murders.

I therefore beg to submit as pointed out above that there sufficient grounds both of law and of fact to appeal against order of acquittal and discharge of the accused 1 to 5. The l

n

learned Judge plainly admits that the accused and they alone must have committed the murders, that some of them 1 to 5 had very strong motives to get rid of the late Hutchappa and that some of them were prowling about after midnight near the house where the murdered bodies were found but he says he is only convinced of all this morally and not legally. I have already shown the error of law into which the learned Judge has fallen both as regards the definition of accomplices and the weight to be attached to their evidence which is also opposed to legal Text Books and reported decisions and how the prosecution has been prejudiced thereby. From the evidence it seems to be plain that, the object of the murderers was not for loot principally but to kill Hutchappa and obliterate all marks of the crime by murdering all persons sleeping in the house, also thereby to obliterate all existence of the evidence of the crime. Even the boy would have been murdered if he had slept in some visible portion of the house. The removal of the jewels is most likely a thought that arose after the murder of Honnamma, as the other things in the house were not interfered with.

I have gone through the grounds of appeal appended to with the District Magistrate's letter and the same may be filed with the addition of 2 or 3 legal grounds indicated in the previous part of this note.

With regard to the suggestion of the District Magistrate of Tumkur for engaging the special Government Prosecutor, who conducted the case at the Sessions for the appeal also, it may be done the case is a complicated one and the Judge observed the Public Prosecutor was of great help to him and there is everything to show he has taken great pains and thought. He may be asked not only to file this appeal but also to support the conviction of the 6th accused on behalf of Government.

Submitted for orders

27.2.03

Gubbi Murder Case.

The District Magistrate recommends that an appeal against the acquittal of the first five accused persons should be filed in the case. Mr. V. Ranga Chari who has studied the records has drawn up an elaborate memo. which is submitted. I agree with him that there is a fair case for appeal. ~~as there is~~ The District Magistrate recommends that the case may be entrusted to Mr. Subba Rao

who conducted the,
in the lower Court.
Perhaps the better course
be to associate him
the fore Advocate.

Early orders are ~~was~~
desirable, as if an appe
is lodged, the case mu
be heard as a whole at
with the appeal of the
accused against the
of death.

27/2/

The Dewan
through the
2nd Counsellor

25.2.03

J.170
9-3-03
Warlord
at 6.0 a.m.

I have all that I have
seen & heard upon
the records of the case
am inclined to think
this is a fit case for
an appeal. I am
accordingly disposed
an appeal be filed

forwards copy of judgment
of the Chief Court passed
in the appeal case preferred
by Govt. The appeal preferred
by Govt has been dismissed.
and the Conviction of
Sidda the 6th accused
has been reversed.

Submitted for orders with
draft recording the Govt
Advocate's letter

The Govt Advocate's letter
24/9/03 may perhaps be
called if there is a possibility of the
real murderers being traced by
making further enquiries into the
circs connected with the crime. The Chief
Court's judgment throws suspicion on
Shanbogue Ramayya, who, it will be
remembered, has also been implicated
by the Committing Magte. J. (24/9/03)

Draft submitted.

The Dewan through
20/9/03 the 2nd Councillor 24/9/03.

The result is unfortunate. I
agree to the draft. 24/9/03.

13177
25.9.03

The Director ——— 29 16

The Inspector General of Police has now submitted copy of a memo from the Govt Advocate containing his opinion on the points commented upon by the Chief Court, and states that the conduct of the Police appears to him to be flawless and does not seem to call for any further action.

Submitted for orders.

27/2/04 This does not seem to be quite a pertinent reply to the observation of Govt that "the Inspr General of Police will not lose sight of the matter, if there is any possibility of the real culprits being discovered and brought to justice." Instead of instituting further enquiries into the case connected with the crime, — which was all that was called for, — the Inspector General sends a criticism of the judgment of the highest Court of appeal by the Govt Advocate. Such a criticism, even if quite in order, does not seem to be of much practical use, as the Court provides no machinery for a revision of the Chief Court's findings, which must be accepted as final.

T. It seems to be a great pity that a horrible
30 sensational murder should be allowed to
end like this. But as the Asst Govt
says no further action is called for, perhaps
the Comm[rs] may be recorded accordingly.

29/12/04

Submitted to the Dewan
through the 2nd Councillor 29/12/04

Seen 2.1.05

I quite agree with the Chandra-
-sekhara Aiyar. The D.S.P. was
not warned to take any
action in regard to the
conduct of the Police. His
report therefore is not to
the point and the procedure
adopted both by him &
by the Govt Advocate
was most unusual. All
that he can get to do is to
bear in mind the observation
made by Govt in their
order of 17th October 03, in
consequential action if any.

3/1/04

5.3.04
2nd/
3.3.04

May be recorded

5.3.04

D.M.P. Asst

1 J 22/14

189

From

The Inspector General of Police
in Mysore.

To

The Secretary to the Govt. of Mysore,
General and Revenue Depts.

Dated 23rd March 1903.

Despatched 24th March 1903.

Received

General No. Camp, 19.
No.

Enclosure No. (18)

Submitting for the inform-
on and orders of Government, the
ords of enquiry held by the District
Istrate of Tumkur on the complaint
by one Thammaya of Gubbi about
conduct of the police (Subordinate) in the
stgation of the Gubbi murder case
soliciting the sanction of ---
rnment to prosecute Thammaya ---
inally at Government cost.

Compl

Very early with a note please.

25/3/3

7.3.03.

SECTION Police

FILE No 45 of 02-03

1

32
2

OFFICE OF THE
INSPECTOR GENERAL OF POLICE IN MYSORE

No. Camp I8 Dated. 23rd March. 1903.189

Enc. (I8)

From

C.Madiah Esquire , Rao Bahadur ,
THE INSPECTOR GENERAL OF POLICE IN MYSORE.

To

H.V.Nanjundayya Esquire M.A.M.L.
THE SECRETARY TO THE GOVT. OF MYSORE,
GENERAL AND REVENUE DEPARTMENTS.

SIR,

I have the honor to submit for the information and orders of Government Tumkur District Magistrate's letter No: Camp B. dated the 21st March 1903 in original together with the proceedings of enquiry held by him .

The petition and the statement made before me by Thammaya, brother of the deceased Huchappa, were so startling that I could not but request the Deputy Commissioner and District Magistrate of Tumkur to be good enough to make a local enquiry in as much as the allegations contained in them were of a very serious nature . Not only, the conduct of a responsible officer of no less a rank than that of a

Superintendent

Superintendent of Police, like Mr: Kristna Rao, was impeached but an attempt was also made to render the whole of the judicial proceedings connected with the Quadruple murder case of Gubbi doubtful , because, according to the petitioner, the property discovered in connection with the said case was not bona fide jewels worn by the deceased Honnamma , one of the murdered , but those introduced by the Superintenden of Police after obtaining them from the petitioner. The identity of the property was sworn to by the petitioner before the Committing Magistrate and the Sessions judge, without even hinting at the remotest shadow of doubt on the point . His present motive i coming forward with this new and unfounded story , as the District Magistrate's enquiry has proved , - appears to me most mysterious . It may either be to " create a doubt in the minds of the Judges of the Chief Court " before whom an appeal is pending , as observed by the District Magistrate , or to have his enemies such as Ramayya , Bhadrachary , &c to b proceeded against , he being dissatisfied that the Police had taken no steps against them . The fact however remains that the petitioner has taken a mos daring and ill-advised step and it is necessary in

the interests of public service , an example should be made of such an unscrupulous individual .

In these circumstances , I would request you will be good enough to obtain the sanction of Government to prosecute Thammaya criminally ; at Government cost , for making such an un-founded and damaging statement .

I have the honor to be

Sir ,

your most obedient servant

Inspector General of Police .

SECTION Police

FILE No. 45/102-03

SERIAL No. 2

Read:—

Letter No Camp 19
dated 23rd March 03
from the Inspector
General of Police in
Mysore, Submitting
the records of an enquiry
held by the District
Magistrate of Tumkur
on the complaint
made by one Thamm
-aiah about the
Conduct of the
Supdt of Police, D'Tum
Dt, in the investi-
-gation of the
Gubbi Murder Case
and soliciting the
Sanction of Govt
to prosecute Thamm
-aiah criminally
for at Govt Cost
for making such
unfounded
and damaging State
-ments.

Order thereon:—

bjection to any
ction ~~being taken~~
that
y the Inspector
neral of Police
nsiders necessary
the interests
ustice, against
hammidah who has
~~deliberately~~ attempted
pass off a false
ory before him
nd to throw discredit
nd ~~suspicion~~ his-
icion on the action
the Police Inspt.

that to him appears
necessary and proper

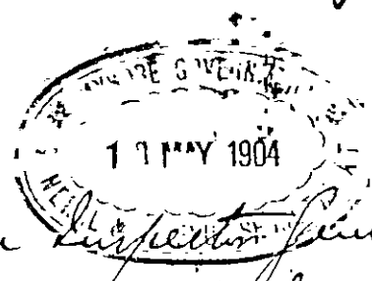
18/4/03

18/4/03

for Secretary

the Inspector Gl.
of Police returning
enclosures —

1
p 1695



From

The Inspector General of Police
in Mysore.

SECTION police

FILE No. P 0803-09

SERIAL No. 13

To,

The Secretary to the Govt.
of Mysore,
Genl. & Rev. Departs.

No. A. dated 9th May 1904.

Reporting that Mr. Lalgram
Subba Rao, Advocate, has
been authorized, to Conduct
the prosecution of the Case
against Shanmiah.

To

Office of the Inspector General
of Police in Mysore

No. A

Dated, Bangalore, 9th May 190

From

F. E. b. Carr, Esquire.

Inspector General of Police in
Mysore.

To

L. Anantasami Rao, Esquire, B.A.,

Offg. Secretary to the Government
of His Highness the Maharaja
of Mysore,
Genl. and Rev. Departments.

Sir,

Government Proceedings

R. O. G. 1650 dated 20th April 1903,

re the prosecution of Thammiah.

I have the honour to report
that I have, on the strength of the
above Government Order, authorized
Mr. Saligram Subba Rao, Advocate,
to conduct the prosecution of the
case against Thammiah, and

trust that Government will approve

of my action.

I have the honour to be

Sir

Your most obedient servant

Inspector General of Police

SECTION—Police

FILE No.—45 of 02-03

SERIAL No.—4

Govt Proc: No J.16:
dated the 20th April 1903
authorizing the Inspector
Genl of Police to take
any action he considers
necessary in the interests
of justice, against Thau
-miah who attempted
to pass off a false stor
before him and to throw
discredit and suspicion
on the action of the Police
Supdt of Tumkur in
the investigation of the
Gubbi murder case.
(2) Letter No A dated 9th
May 1904 from the
Inspector General of
Police in Mysore, stat
that he has on the stre
of the above order,
authorized Mr Saligra
Subba Rao, Advocate
to conduct the prose-
-cution of the case
against Thaumiah.

Order thereon:—
The action

Key by the Inspector
general is approved.
The result of the case
should be reported
to the information
of Government. 3

23/5/04

H.J. Secretary

H-5.V

The Inspector General
of Police.

The Comptroller & Auditor
Genl.

18768

21.V.04

23/5

YV ... 1812

1903-04. 12 -

From,

The Inspector General of Poli

in Mysore

To,

The Secretary to the Govt: of

H. H. the Maharaja of Mys

in the Genl: & Reve: Department

SECTION Revenue

FILE No. 45 of 02-03

5

Dated.

Despatched, 16 June 04.

Received.

General No: 7465

No: 465

Enclosure No:

Explaining why the
Services of the Government
Public Prosecutor were
availed of to conduct the
prosecution of Thammiah

1465
465

Inspector General of Police

Dated Bangalore, 15th
16

From,

F. E. C. Carr Esquire,

Inspector General of Police

in Mysore.

To,

L. Anantasami Rao Esquire, B. A.,

Offg: Secretary to the Government of

His Highness the Maharaja of Mys

in the General and Revenue Departments.

Sir,

Reference:-

Para 3 of Government Proceedings No: 2531-32
J.F.35 of02-0
observing that it is not explained why the services of the Government Public Prosecutor were not availed of to conduct the prosecution of Thammiah.

----------poOop----------

I have the honor to state that as the services of Mr: Saligram Subba Rao had been entertained in the Gubbi murder case from the very commencement, and as he was thoroughly well posted up in all its details, it was thought advisable to continue him in this connected case.

Subject to orders on the
Note this remark added
as para 3 of the G.O. of
25-3-04.

20.6.04

1466
20.6.04

SECTION—Police —

FILE NO 45/02-03

6

Read :—

Letter No 7445 dated
the 15th June 1904 from the I.G. of Police
with reference to Govt
Progs: No 2531-32
J.F. 35—02-03 dated
the 25th May 1904, that
as the ~~late~~ services of
Mr Saligram Subba Rao
had been entertained
in the Gubbi murder
case from the very
commencement and ~~he~~
he was (before charge of the case)
~~thoroughly well~~
~~posted~~ fact thereof in all its
~~details~~, it was thought
advisable to continue
him in (the Collector's) ~~the~~ case
against Thammiah.

No: 2766
J 35-02-03 24/6/04

Order thereon :—

Recorded

24/6/1904

Offg. Secretary

To

The Inspector General
of Police in